

Mossack Fonseca Explains Changes to Panama's Bearer Shares Regime

Bearer Share Custody System

[The bearer share immobilization system](#) was introduced in Panama by means of Law 47 of 6th August 2013 and was substantially amended by Law 18 of 23rd April 2015. Luis Quiel of Mossack Fonseca shall review here the most important aspects of the custody system, as modified by the most recent amendments.

Entry into Force is Moved Forward

Companies that were formed before 4th May 2015 have up to 31st December 2015 to delete from their articles of incorporation the possibility of issuing bearer shares or to deposit the bearer share certificates with an authorized custodian. The latter would require, either amending the articles of incorporation to expressly allow bearer shares under the custody system, or having such system approved in a board of directors minutes registered at the Public Registry.

If any company does not formally approve (before 31st December 2015) a decision to allow the immobilization of bearer share certificates, the bearer share certificates that it has issued shall be null and void by full right.

The deadline of 31st December 2015 applies only to companies formed before 4th May 2015. For bearer shares issued on or after 4th May 2015, the term expired on 4th August 2015.

Legal Consequences of Lack of Action

Articles of incorporation of companies that envisage the issuance of bearer shares and that have not been amended to provide for immobilization with authorized custodians (save if the decision was adopted through a board resolution duly registered at the Public Registry) will be deemed to have been amended by operation of law as of 1st January 2016. This will cause two important consequences for such companies: 1) bearer shares that are

outstanding shall be irrevocably null and void, and 2) the company may not issue new bearer shares.

Immobilization or Custody System

To benefit from the bearer share custody system, certain requirements need to be complied with as follows:

1. Amendment of the articles of incorporation or registration of the decision of the corporation's board of directors before 31st December 2015, so as to envisage bearer shares in custody according to the system created by Law 47 of 2013 and Law 18 of 2015.
2. Deposit of the bearer share certificates with an authorized custodian.
3. The authorized custodian shall require a sworn statement from the shareholder that includes information allowing due identification of the owner of the bearer shares and the corporation's resident agent, including contact details.

The law provides for two kinds of authorized custodians: 1) local authorized custodians, and 2) foreign authorized custodians. The former may be banks holding a general license and trust companies authorized by the Panama Bank Superintendence (SBP—its initials in Spanish); brokerage houses and securities clearing houses authorized by the Securities Market Superintendence (SMV—its initials in Spanish); and [attorneys at law](#) certified as such by the Supreme Court of Justice.

Banks, trust companies, and financial intermediaries may be foreign authorized custodians if they hold a license for practicing their activities as set forth in jurisdictions that are members of the Financial Action Task Force (FATF) on Money Laundering or are associated members that are registered with the SBP on a special register that the latter keeps to such end.

Rights over Certificates in Custody

The ownership of shares in custody may be transferred without need for the physical delivery of the certificates, provided that the owner advises the custodian that he/she has made the transfer and that the acquirer submits a sworn statement to the custodian that includes the required information (name and identification data, as well as contact data).

The law provides, likewise, for an interesting pledge system that allows the creation of such encumbrance on bearer shares in custody, by the owner merely giving notice to the

authorized custodian whereby he/she advises the pledging of the shares as well as the lienholder's full name, physical address, telephone number, and email address.

Lastly, a special inheritance disposition system has been created for bearer shares that allow owners to dispose mortis cause of their shares, without need for such shares to be the object of a probate process for their transfer upon the grantor's death.

Conclusion

As Luis Quiel of [Mossack Fonseca](#) has outlined, as of 1st January 2016, bearer shares that are not regulated by the custody system in accordance with Law 47 of 2013, as amended by Law 18 of 2015, shall be irrevocably null and void by operation of law. It is important to take provisions in time and to make corporate decisions in accordance with the formalities set by the law. Otherwise, the legal and financial consequences of the annulment of the rights inherent to such bearer shares may be quite costly.